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**Changes to legislation:** There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, Cross Heading: Register of members. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 5

#### OPTION TO KEEP INFORMATION ON CENTRAL REGISTER

##### PART 1

##### CREATION OF THE OPTION

##### *Register of members*

1 Part 8 of the Companies Act 2006 (a company's members) is amended as follows.

.....  
**Commencement Information**

**11** Sch. 5 para. 1 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

2 In Chapter 2 (register of members), before section 113 insert—

##### **Alternative method of record-keeping**

“112A This Chapter must be read with Chapter 2A (which allows for an alternative method of record-keeping in the case of private companies).”

.....  
**Commencement Information**

**12** Sch. 5 para. 2 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

3 After Chapter 2 insert—

##### “CHAPTER 2A

##### OPTION TO KEEP INFORMATION ON CENTRAL REGISTER

##### **Introduction**

128A(1) This Chapter sets out rules allowing private companies to keep information on the register kept by the registrar instead of entering it in their register of members.

(2) The register kept by the registrar (see section 1080) is referred to in this Chapter as “the central register”.

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### **Right to make an election**

128B) An election may be made under this section—

- (a) by the subscribers wishing to form a private company under this Act, or
  - (b) by the private company itself once it is formed and registered.
- (2) In the latter case, the election is of no effect unless, before it is made—
- (a) all the members of the company have assented to the making of the election, and
  - (b) any overseas branch registers that the company was keeping under Chapter 3 have been discontinued and all the entries in those registers transferred to the company's register of members in accordance with section 135.
- (3) An election under this section is made by giving notice of election to the registrar.
- (4) If the notice is given by subscribers wishing to form a private company—
- (a) it must be given when the documents required to be delivered under section 9 are delivered to the registrar, and
  - (b) it must be accompanied by a statement containing all the information that—
    - (i) would be required (in the absence of the notice) to be entered in the company's register of members on incorporation of the company, and
    - (ii) is not otherwise included in the documents delivered under section 9.
- (5) If the notice is given by the company, it must be accompanied by—
- (a) a statement by the company—
    - (i) that all the members of the company have assented to the making of the election, and
    - (ii) if the company was keeping any overseas branch registers, that all such registers have been discontinued and all the entries in them transferred to the company's register of members in accordance with section 135, and
  - (b) a statement containing all the information that is required to be contained in the company's register of members as at the date of the notice in respect of matters that are current as at that date.
- (6) The company must where necessary update the statement sent under subsection (5)(b) to ensure that the final version delivered to the registrar contains all the information that is required to be contained in the company's register of members as at the time immediately before the election takes effect (see section 128C) in respect of matters that are current as at that time.
- (7) The obligation in subsection (6) to update the statement includes an obligation to rectify it (where necessary) in consequence of the company's register of members being rectified (whether before or after the election takes effect).

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- (8) If default is made in complying with subsection (6), an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- For this purpose a shadow director is treated as an officer of the company.
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (10) A reference in this Chapter to matters that are current as at a given date or time is a reference to—
- (a) persons who are members of the company as at that date or time, and
  - (b) any other matters that are current as at that date or time.

### **Effective date of election**

- 128C(1) An election made under section 128B takes effect when the notice of election is registered by the registrar.
- (2) The election remains in force until either—
- (a) the company ceases to be a private company, or
  - (b) a notice of withdrawal sent by the company under section 128J is registered by the registrar,
- whichever occurs first.

### **Effect of election on obligations under Chapter 2**

- 128D(1) The effect of an election under section 128B on a company's obligations under Chapter 2 is as follows.
- (2) The company's obligation to maintain a register of members does not apply with respect to the period when the election is in force.
- (3) This means that, during that period—
- (a) the company must continue to keep a register of members in accordance with Chapter 2 (a “historic” register) containing all the information that was required to be stated in that register as at the time immediately before the election took effect, but
  - (b) the company does not have to update that register to reflect any changes that occur after that time.
- (4) Subsections (2) and (3) apply to the index of members (if the company is obliged to keep an index of members) as they apply to the register of members.
- (5) The provisions of Chapter 2 (including the rights to inspect or require copies of the register and to inspect the index) continue to apply to the historic register and, if applicable, the historic index during the period when the election is in force.
- (6) The company must place a note in its historic register—

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- (a) stating that an election under section 128B is in force,
  - (b) recording when that election took effect, and
  - (c) indicating that up-to-date information about its members is available for public inspection on the central register.
- (7) Subsections (7) and (8) of section 113 apply if a company makes default in complying with subsection (6) as they apply if a company makes default in complying with that section.
- (8) The obligations under this section with respect to a historic register and historic index do not apply in a case where the election was made by subscribers wishing to form a private company.

### **Duty to notify registrar of changes**

- 128E) The duty under subsection (2) applies during the period when an election under section 128B is in force.
- (2) The company must deliver to the registrar any relevant information that the company would during that period have been obliged under this Act to enter in its register of members, had the election not been in force.
- (3) “Relevant information” means information other than—
- (a) the date mentioned in section 113(2)(b) (date when person registered as member),
  - (b) the date mentioned in section 123(3)(b) (date when membership of limited company increases from one to two or more members), and
  - (c) the dates mentioned in the following provisions, but only in cases where the date to be recorded in the central register is to be the date on which the document containing information of the relevant change is registered by the registrar—
    - (i) section 113(2)(c) (date when person ceases to be member),
    - (ii) section 123(2)(b) (date when company becomes single member company).
- (4) The relevant information must be delivered as soon as reasonably practicable after the company becomes aware of it and, in any event, no later than the time by which the company would have been required to enter the information in its register of members.
- (5) In a case of the kind described in subsection (3)(c), the company must, when it delivers information under subsection (2) of the relevant change, indicate to the registrar that, in accordance with section 1081(1A), the date to be recorded in the central register is to be the date on which the document containing that information is registered by the registrar.
- (6) If default is made in complying with this section, an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

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- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **Information as to state of central register**

- 128(F) When a person inspects or requests a copy of material on the central register relating to a company in respect of which an election under section 128B is in force, the person may ask the company to confirm that all information that the company is required to deliver to the registrar under this Chapter has been delivered.
- (2) If a company fails to respond to a request under subsection (1), an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Power of court to order company to remedy default or delay**

- 128(G) This section applies if—
- (a) the name of a person is without sufficient cause included in, or omitted from, information that a company delivers to the registrar under this Chapter concerning its members, or
  - (b) default is made or unnecessary delay takes place in informing the registrar under this Chapter of—
    - (i) the name of a person who is to be a member of the company, or
    - (ii) the fact that a person has ceased or is to cease to be a member of the company.
- (2) The person aggrieved, or any member of the company, or the company, may apply to the court for an order—
- (a) requiring the company to deliver to the registrar the information (or statements) necessary to rectify the position, and
  - (b) where applicable, requiring the registrar to record under section 1081(1A) the date determined by the court.
- (3) The court may either refuse the application or may make the order and order the company to pay any damages sustained by any party aggrieved.
- (4) On such an application the court may decide—
- (a) any question relating to the title of a person who is a party to the application to have the person's name included in or omitted from information delivered to the registrar under this Chapter about the company's members, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and

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- (b) any question necessary or expedient to be decided for rectifying the position.
- (5) Nothing in this section affects a person's rights under section 1095 or 1096 (rectification of register on application to registrar or under court order).

### **Central register to be evidence**

- 128H) The central register is prima facie evidence of any matters about which a company is required to deliver information to the registrar under this Chapter.
- (2) Subsection (1) does not apply to information to be included in a statement under section 128B(5)(b) or in any updated statement under section 128B(6).

### **Time limits for claims arising from delivery to registrar**

- 128I) Liability incurred by a company—
  - (a) from the delivery to the registrar of information under this Chapter, or
  - (b) from a failure to deliver any such information,
 is not enforceable more than 10 years after the date on which the information was delivered or, as the case may be, the failure first occurred.
- (2) This is without prejudice to any lesser period of limitation (and, in Scotland, to any rule that the obligation giving rise to the liability prescribes before the expiry of that period).

### **Withdrawing the election**

- 128J) A company may withdraw an election made by or in respect of it under section 128B.
- (2) Withdrawal is achieved by giving notice of withdrawal to the registrar.
- (3) The withdrawal takes effect when the notice is registered by the registrar.
- (4) The effect of withdrawal is that the company's obligation under Chapter 2 to maintain a register of members applies from then on with respect to the period going forward.
- (5) This means that, when the withdrawal takes effect—
  - (a) the company must enter in its register of members all the information that is required to be contained in that register in respect of matters that are current as at that time,
  - (b) the company must also retain in its register all the information that it was required under section 128D(3)(a) to keep in a historic register while the election was in force, but
  - (c) the company is not required to enter in its register information relating to the period when the election was in force that is no longer current.
- (6) The company must place a note in its register of members—
  - (a) stating that the election under section 128B has been withdrawn,

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- (b) recording when that withdrawal took effect, and
  - (c) indicating that information about its members relating to the period when the election was in force that is no longer current is available for public inspection on the central register.
- (7) Subsections (7) and (8) of section 113 apply if a company makes default in complying with subsection (6) as they apply if a company makes default in complying with that section.

### **Power to extend option to public companies**

128K1) The Secretary of State may by regulations amend this Act—

- (a) to extend sections 128A to 128J (with or without modification) to public companies or public companies of a class specified in the regulations, and
  - (b) to make such other amendments as the Secretary of State thinks fit in consequence of that extension.
- (2) Regulations under this section are subject to affirmative resolution procedure.”

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#### **Commencement Information**

**I3** Sch. 5 para. 3 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

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